



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

NORTHERN REGIONAL OFFICE  
13901 Crown Court, Woodbridge, Virginia 22193  
(703)583-3800 FAX (804) 698-4178  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

Ann F. Jennings  
Secretary of Natural and Historic Resources

David K. Paylor  
Director  
(804) 698-4000

Thomas A. Faha  
Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Town of Hamilton  
FOR  
Town of Hamilton Sewage Treatment Plant  
VPDES Permit No. VA0020974**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Town of Hamilton, regarding the Town of Hamilton Sewage Treatment Plant, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and/or regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" or "STP" means the Town of Hamilton Sewage Treatment Plant, located at 104 North Rogers Street in Loudoun County, Virginia, from which discharges of treated sewage occur.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES Individual Permit No. VAR0020974, which was issued under the State Water Control Law and the Regulation to the Town of Hamilton on October 1, 2016.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9  
VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "TMDL" means total maximum daily load.
21. "Town of Hamilton" or "Town" means the Town of Hamilton, a political subdivision of the Commonwealth of Virginia. The Town of Hamilton is a "person" within the meaning of Va. Code § 62.1-44.15.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VAC" means the Virginia Administrative Code.
24. "VPDES" means Virginia Pollutant Discharge Elimination System.
25. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. The Town of Hamilton owns the Facility, and the Permit allows the Town to discharge treated effluent from the STP to an unnamed tributary of South Fork Catoctin Creek, in strict compliance with the terms of the Permit.
2. The unnamed tributary receiving the discharge has been neither monitored nor assessed. South Fork Catoctin Creek is located approximately 1.7 miles downstream from the outfall, and based on DEQ's 2020 305(b) report, it has been assessed as impaired for the recreation use because of bacteria (*E. coli*), and a fecal coliform Total Maximum Daily Load (TMDL) has been completed and approved for South Fork Catoctin Creek. The aquatic life use is assessed as impaired based on benthic macroinvertebrate bioassessment, and observed effects for total phosphorus and mercury in sediment are also noted for the aquatic life use. The wildlife use is considered fully supporting, and there are insufficient data to assess the fish consumption use.
3. In submitting its DMRs, as required by the Permit, the Town of Hamilton reported the following monitoring data for discharges from Outfall 001:

October 2021 DMR:

- a. Reported an Ammonia, as N weekly concentration average maximum of 3.35 mg/L, compared to a permitted limit of 2.4 mg/L.
- b. Reported an Ammonia, as N monthly concentration average of 1.35 mg/L, compared to a permitted limit of 1.3 mg/L.

September 2021 DMR:

- c. Reported an Ammonia, as N weekly concentration average maximum of 4.30 mg/L, compared to a permitted limit of 2.4 mg/L.
- d. Reported an Ammonia, as N monthly concentration average of 11.57 mg/L, compared to a permitted limit of 1.3 mg/L.

August 2021 DMR:

- e. Reported an Ammonia, as N weekly concentration average maximum of 12.63 mg/L, compared to a permitted limit of 2.4 mg/L.
- f. Reported an Ammonia, as N monthly concentration average of 6.33 mg/L, compared to a permitted limit of 1.3 mg/L.

July 2021 DMR:

- g. Reported an Ammonia, as N weekly concentration average maximum of 10.2 mg/L, compared to a permitted limit of 2.4 mg/L.
- h. Reported an Ammonia, as N monthly concentration average of 4.8 mg/L, compared to a permitted limit of 1.3 mg/L.

June 2021 DMR:

- i. Reported an Ammonia, as N weekly concentration average maximum of 3.1 mg/L, compared to a permitted limit of 2.4 mg/L.

May 2021 DMR:

- j. Reported an Ammonia, as N weekly concentration average maximum of 3.5 mg/L, compared to a permitted limit of 2.4 mg/L.

February 2021 DMR:

- k. Reported an Ammonia, as N weekly concentration average maximum of 8.90 mg/L, compared to a permitted limit of 2.4 mg/L.
- l. Reported an Ammonia, as N monthly concentration average of 1.93 mg/L, compared to a permitted limit of 1.3 mg/L.

January 2021 DMR:

- m. Reported an Ammonia, as N weekly concentration average maximum of 7.93 mg/L, compared to a permitted limit of 2.4 mg/L.
- n. Reported an Ammonia, as N monthly concentration average of 2.16 mg/L, compared to a permitted limit of 1.3 mg/L.

December 2020 DMR:

- o. Reported an Ammonia, as N weekly concentration average maximum of 2.7 mg/L, compared to a permitted limit of 2.4 mg/L.

- 4. Part 1.A.1 of the Permit lists the effluent limitations for discharges from the STP.
- 5. The DMR submitted for May 2021 reported that the BOD sample collected on May 4, 2021, had exceeded the holding time for analysis of BOD. This exceedance resulted in an incomplete sample frequency for BOD sampling for the first week of May 2021.
- 6. Parts 1.A.1 and II.A of the Permit list the monitoring requirements for discharges from the STP.
- 7. The Town of Hamilton submitted an inflow and infiltration (I&I) annual report to DEQ on August 26, 2021, which was after the due date of August 10, 2021.
- 8. Part 1.C.11 of the Permit requires the Town of Hamilton to submit an I&I annual report to DEQ by August 10 of each calendar year detailing the previous fiscal year's activities/operations under the STP's capacity, management, operation and maintenance (CMOM) program.
- 9. DEQ issued three Warning Letters (WLs) and three Notices of Violation (NOVs) to the Town of Hamilton as follows:
  - a. WL No. W2021-03-N-1030 dated March 22, 2021.
  - b. WL No. W2021-04-N-1009 dated April 21, 2021.
  - c. WL No. W2021-07-N-1005 dated July 15, 2021.

- d. NOV No. W2021-08-N-0001 dated August 13, 2021.
  - e. NOV No. W2021-09-N-0001 dated September 13, 2021.
  - f. NOV No. W2021-10-N-0008 dated October 14, 2021.
  - g. NOV No. W2021-11-N-0003 dated November 9, 2021.
  - h. NOV No. W2021-12-N-0003 dated December 14, 2021.
10. In responding to the initial NOV, the Town of Hamilton provided DEQ enforcement with a cover letter that had been previously submitted with the July 2021 DMR to explain the Ammonia, as N exceedances were related to performance issues with newly installed blower equipment. Representatives of the Town of Hamilton had conference calls with DEQ on August 30 and September 20, 2021, to discuss the NOVs and updates on corrective actions, and the Town has also been submitting regular email updates to DEQ.
  11. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
  12. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
  13. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
  14. The Department has issued no VPDES permits or certificates to the Town of Hamilton for the Facility other than VPDES Permit No. VA0020974.
  15. The unnamed tributary of South Fork Catoctin Creek that receive discharges from the Facility is a surface waters located wholly within the Commonwealth and is a “state water” under State Water Control Law.
  16. Based on the DMRs submitted by the Town, WLs and NOVs issued, the responses from the Town of Hamilton, and related correspondence between DEQ and representatives of the Town, the Board concludes that the Town of Hamilton has violated 9VAC25-31-50, and Parts I.A.1, I.C.11 and II.A of the Permit, by discharging from the Facility while concurrently failing to comply with the conditions of the Permit.
  17. In order for the Town of Hamilton to return to compliance, DEQ staff and representatives of the Town have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Town of Hamilton, and the Town of Hamilton agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of the Town of Hamilton for good cause shown by the Town of Hamilton, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2021-12-N-0003 dated December 14, 2021, NOV No. W2021-11-N-0003 dated November 9, 2021, NOV No. W2021-10-N-0008 dated October 14, 2021, NOV No. W2021-09-N-0001 dated September 13, 2021, NOV No. W2021-08-0N-0001 dated August 13, 2021, WL No. W2021-07-N-1005 dated July 15, 2021, WL No. W2021-04-N-1009 dated April 21, 2021, and WL No. W2021-03-N-1030 dated March 22, 2021. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Town of Hamilton admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. The Town of Hamilton consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town of Hamilton declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by the Town of Hamilton to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town of Hamilton shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Town of Hamilton shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town of Hamilton shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town of Hamilton.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after the Town of Hamilton has completed all of the requirements of the Order;
  - b. the Town of Hamilton petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Town of Hamilton.



Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town of Hamilton from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by the Town of Hamilton and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of the Town of Hamilton certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town of Hamilton to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town of Hamilton.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, the Town of Hamilton voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 22<sup>nd</sup> day of March, 2022.

  
Thomas A. Faha, Regional Director  
Department of Environmental Quality

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The Town of Hamilton voluntarily agrees to the issuance of this Order.

Date: 1/13/22 By: [Signature] MAYOR PRO TEM  
(Person) (Title)  
Town of Hamilton

Commonwealth of Virginia  
City/County of Loudoun

The foregoing document was signed and acknowledged before me this 13<sup>th</sup> day of  
January, 2022, by Kenneth C Wine who is  
\_\_\_\_\_ of the Town of Hamilton, on behalf of the Town.

[Signature]  
Notary Public

7520049  
Registration No.

My commission expires: May 31, 2024

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

The Town of Hamilton shall:

1. By August 12, 2022, replace the current blowers with positive displacement type blower equipment as proposed in the plan emailed to DEQ on December 22, 2021, and submit to DEQ documentation of the completed work and a summary of effluent monitoring data to demonstrate a return to compliance.
2. Unless otherwise specified in this Order, the Town shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality  
Northern Regional Office  
Attention: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193